IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 745 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy of the judgement? :

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? :

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? :

FAKIR MOHMAD SADDIKBHAI MEMAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 745 of 2002

MR PS PATEL for Petitioner No. 1

MR PR ABICHANDANI, APP for Respondent No. 1

MR RR MARSHALL for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of Judgment: 16/04/2003

ORAL JUDGEMENT

In this matter, a note for speaking to minutes was filed by learned counsel for the respondent No.2 and therefore, this court vide order dated 10-4-2003 recalled the final judgment and order dated 12-3-2003 passed by this Court in Special Criminal Application No.745 of 2002 and matter was ordered to be placed on 16-4-2003 for hearing.

2. Today I have heard learned counsel appearing for the respective parties.

3. Looking to the facts and circumstances of the case, consequent upon recalling of the judgment and order dated 12-3-2003 passed in Special Criminal Application No.745 of 2002, fresh judgment is being delivered hereinafter.

4. By way of this petition, the petitioner has challenged the legality and validity of the order dated 30-8-2002 passed by the learned Additional Sessions Judge, Mehsana in Criminal Revision Application Nos.123 and 145 of 2002 whereby the order dated 5-7-2002 passed by the learned J.M.F.C., Visnagar was set aside and learned Magistrate was directed to hand over interim custody of the muddamal truck to Tata Engineering and Locomotive Co. Ltd., Mumbai.

5. The case in short is that the truck in question was purchased by the petitioner from the respondent No.2 under Hire Purchase Agreement dated 31-12-2001. Since the petitioner failed in making the payment and also since the said vehicle was used in illegal activities, it was seized by the police during the course of investigation in connection with Visnagar Police Station C.R.No.I-68 of 2002. Since then, the vehicle is in custody of the court. Both the parties applied for interim custody of the vehicle under Sec.451, Cr.P.C. before the learned J.M.F.C., Visnagar. However, both the applications were rejected by the learned Magistrate. Thereafter, Cri.Revision Application Nos.123 of 2002 and 145 of 2002 were preferred by the the petitioner and the respondent No.2 respectively before the Sessions Court at Mehsana. Having heard the parties of both the sides, leaned Addl. Sessions Judge, Mehsana vide order dated 30-8-2002 passed the following order:

> "Criminal Revision Application No.123 of 2002 filed by the applicant Fakir Mohmad Siddikbhai Meman is rejected. Whereas the Criminal Revision Application No.145 of 2002 filed by TATA Engineering and Locomotive company

Limited, Mumbai is hereby allowed.

The impugned order dated 5.7.2002 passed by the Learned Magistrate, Visnagar, below the interim application Ex.9 is set aside and the learned Magistrate, Visnagar is hereby directed to hand over the interim custody of the Muddamal Truck to the applicant TATA Engineering and Locomotive Company Limited on the condition that the applicant company through its responsible officer shall execute bond in sum of Rs.4,00,000/- with a solvent surety to the satisfaction of the learned Magistrate of the Visnagar and shall file an undertaking in the Court below to the effect that they will not transfer the vehicle to anybody else nor possession of the same to be parted with until disposal of the case."

It clearly appears from the above order that the learned Addl. Sessions Judge has ordered to hand over the truck in question to the respondent No.2. Hence, the present petition has been filed by the present petitioner.

6. In this matter, this Court (Coram:D.H.Waghela,J.) vide order dated 7-10-2002 has issued rule making it returnable on 22-10-2002. Thereafter, matter was adjourned from time to time and today it is taken up for final hearing.

7. Heard the learned counsel for the respective parties.

8. Learned counsel for the petitioner has mainly argued that as per various decisions of the Hon'ble Apex Court, interim custody of the vehicle in question is required to be handed over to the petitioner being registered owner on appropriate terms and conditions. In support of his submissions, he has drawn my attention towards the decision of 2002(8) Supreme 525, more particularly paras 17 and 18, which reads as under:

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of

such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

9. Learned counsel for the petitioner has also drawn my attention towards the decision of the Hon'ble Apex Court reported in (2001) 9 SCC 718 wherein it was held at head note as under:

"Criminal Procedure Code, 1973 - S.451 Conditional release of vehicle during the trial No advisable to keep the vehicle in court compound indefinitely--More advisable to release it to the owner by imposing certain conditions during the pendency of the trial."

10. Learned counsel for the petitioner has also drawn my attention towards the decision of the Hon'ble Apex Court reported in 2002 SCC (Cri) 1034 wherein it was held at head note as under:

"Criminal Procedure Code, 1973 - S.451 Conditional release of vehicle during trial Subject to certain conditions, custody of vehicle could be entrusted temporarily to its registered owner during the pendency of the trial."

11. On the other hand, learned APP and learned counsel for the respondent No.2 have vehemently argued that the impugned order is just and proper and no interference is called for.

12. I have considered the impugned order dated 30-8-2002 passed by the learned Addl. Sessions Judge, Mehsana as also the order dated 5-7-2002 passed by the

learned J.M.F.C., Visnagar.

13. It is pertinent to note that the petitioner is claiming interim custody of the truck in question. The question which arises for consideration of this Court is as to whether the petitioner can be granted possession in view of the settled law laid down by the Apex Court especially when he has not paid up the hire purchase amount by way of instalments. Reliance is placed on the decision of the Apex Court in a case of K.A.Mathai Alias Babu and Another Vs. Kora Bibbikutty and Another, 1996 Supreme Court Cases (Cri) 281 wherein it has been held at head note as under:

> "A.Penal Code, 1860--S.379--Theft--mens rea and dishonest intention--Absence of--bus purchased by A-2 under a hire-purchase agreement--Subsequently the bus sold to the complainant--Complainant defalcating in payment of instalment to the financier--Financier taking possession of the bus with the help of A-1 and A-2--Held, offence of theft not made out.
>
> B.Contract--hire-purchase agreement--Failure to make payment of instalment--Financier has right to resume possession even if the agreement does not contain a clause of resumption of possession--That has to be read in the agreement."

It has been held by the Apex Court in the aforereferred judgment that if the instalment as per the hire-purchase agreement has not been paid to the financier, the financier has the right to resume possession. Hence, without entering into the other aspects of the matter, in view of the aforesaid judgment of the Apex Court, interim custody of the truck in question is required to be handed over to the respondent No.2. The order under Sec.451 of the Code of Criminal Procedure is not final order but only an interim order subject to the final outcome of the trial. Further, if the truck in question is not handed over to the respondent No.2 and is permitted to lie unattended, the same will become junk and, therefore, learned Addl. Sessions Judge, Mehsana has rightly granted custody of the vehicle in question to the respondent No.2. While doing so, court has taken into consideration the interest of the petitioner by ordering the respondent No.2 to execute a bond in the sum of Rs.4,00,000/-with a solvent surety.

14. In view of what has been stated hereinabove, I am

of the opinion that order passed by the learned Addl. Sessions Judge, Mehsana in Criminal Revision Application Nos.123 and 145 of 2002 is not required to be interfered with and this petition is required to be rejected.

15. This petition is rejected. Rule is discharged. Status quo granted earlier stands vacated.

(R.P.DHOLAKIA,J.)

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